

Scott E. Perwin
KENNY NACHWALTER P.A.
1100 Miami Center
201 South Biscayne Boulevard
Miami, FL 33131
(305) 373-1000
Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

IN RE K-DUR ANTITRUST LITIGATION)	
)	
_____)	No. 01-CV-1652-JAG
)	MDL Docket No. 1419
THIS DOCUMENT RELATES TO:)	
)	
<i>Walgreen</i> (01-cv-5232))	
<i>Maxi Drug</i> (05-cv-369))	
_____)	

NOTICE OF APPEAL

PLEASE TAKE NOTICE that Plaintiffs Walgreen Co., Eckerd Corporation, The Kroger Co., Safeway Inc., Albertson's, Inc., Hy-Vee, Inc. and Maxi Drug, Inc. appeal to the United States Court of Appeals for the Third Circuit from the Order filed in this case on March 25, 2010 (Docket No. 758) and all reports and orders subsumed therein. More particularly, Plaintiffs appeal the Report and Recommendation of Special Master Stephen M. Orlofsky (Docket No. 733) adopted as the Opinion of the Court which: (1) granted Defendants' Motion for Summary Judgment as to All Claims Brought by Direct Purchaser Plaintiffs Related to the Upsher Settlement; (2) granted Defendants' Motion for Summary Judgment as to All Claims Brought by Direct Purchaser Plaintiffs Related to the ESI Settlement; (3) denied Direct

Purchaser Plaintiffs' Motion for Partial Summary Judgment as to the Applicable Framework for Analysis of Exclusion Payments; and (4) denied Direct Purchaser Plaintiffs' Motion for Partial Summary Judgment as to the Exclusionary Scope of the '743 Patent

Dated: April 13, 2010

Respectfully submitted,

/s/ Deborah S. Corbishley

Deborah S. Corbishley

Scott E. Perwin

Lauren C. Ravkind

KENNY NACHWALTER, P.A.

1100 Miami Center

201 S. Biscayne Boulevard

Miami, Florida 33131-4327

Telephone: (305) 373-1000

Facsimile: (305) 372-1861

Attorneys for Plaintiffs

Certificate of Service

I hereby certify that, on April 13, 2010, I filed the foregoing Notice of Appeal electronically via the Court's CM/ECF system, which will automatically generate and send a Notice of Electronic Filing to all counsel of record.

/s/ Deborah S. Corbishley